

SENATE BILL REPORT

HB 2396

As of April 17, 2007

Title: An act relating to investment of moneys in the permanent common school fund.

Brief Description: Regarding investment of moneys in the permanent common school fund.

Sponsors: Representatives Fromhold and McDonald.

Brief History: Passed House: 4/16/07, 93-1.

Committee Activity:

SENATE COMMITTEE ON WAYS & MEANS

Staff: Bryon Moore (786-7726)

Background: At statehood, the Enabling Act granted certain lands to the state to be held in trust for various public purposes. Article 9 of the State Constitution reflects the Enabling Act by establishing the Permanent Common School Fund (CSF) and the Common School Construction Fund.

There are five other permanent funds. According to the Washington State Investment Board's (WSIB) 25th Annual Report (June, 30 2006), the total market value of all the permanent funds is \$712,819,394. Fund proceeds are invested in fixed income and short-term holdings, with the exception of the CSF, which is also invested in the U.S. Equity Market Index Fund. The following is a list of the six funds and their value as reported in the annual report:

- Common School Fund - \$164,731,466
- Normal School Fund - \$205,542,307
- Scientific Fund - \$166,740,242
- Agricultural College Fund - \$150,563,410
- State University Fund - \$25,236,818
- Millersylvania Park Fund - \$5,151

The Department of Natural Resources transfers proceeds from the sale of stone, minerals, or property other than timber and crops for school and state land to the WSIB for investment in the CSF. Earnings of the CSF are deposited in the Common School Construction Fund, which is appropriated for K-12 school construction.

In 1966, Article 9, Section 3 of the State Constitution was amended to declare that the principal of the CSF, as such existed on June 30, 1965, must remain "permanent and irreducible." In addition, Article 9, Section 5 of the State Constitution declares that losses to

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the Permanent Fund from "defalcation, mismanagement, or fraud" constitute debts of the state.

Although Article 12, Section 9 establishes a general prohibition on investment of state funds in corporate stock, Article 16, Section 5 expressly provides that the Permanent Fund may be invested as authorized by the Legislature.

In 1999, an opinion of the Washington State Attorney General concluded that the state constitution does not prohibit the investment of moneys in the CSF, as long as the investment is authorized by law and is consistent with applicable trust principles. This opinion further reasoned that the constitutional phrase "permanent and irreducible" bars the Legislature from abolishing the CSF or expending its principal for purposes other than those for which the CSF was established, but does not prohibit the Legislature from specifying permissible investments.

Summary of Bill: The Legislature declares its intent to clarify the law authorizing investment of the Permanent Common School Fund in equities when the investment is in the best interest of the state and the CSF. The legislative findings and declarations of intent also describe the reasoning of the Attorney General's Opinion and the need for more growth in the CSF, given the gap between the CSF's income and actual expenditures on school construction.

The WSIB has the authority to invest the CSF to achieve a balance of long-term growth and current income. The State Treasurer calculates the irreducible principal. The irreducible principal does not include investment gains, and the WSIB may retain or distribute income and investment earnings to achieve a balance between growth and income. Statutes governing the Permanent Fund and the WSIB's investment authority are amended to reflect this change.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.